

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1436 be amended to read as follows:

- 1 Page 3, after line 17, begin a new paragraph and insert:
- 2 "SECTION 5. IC 8-1-33 IS ADDED TO THE INDIANA CODE AS
- 3 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 4 2004]:
- 5 **Chapter 33. Women and Minority Business Enterprises**
- 6 **Sec. 1. (a) The general assembly finds and declares that the**
- 7 **essence of the American economic system of private enterprise is**
- 8 **free competition. Only through full and free competition can free**
- 9 **markets, reasonable and just prices, free entry into business, and**
- 10 **opportunities for the expression and growth of personal initiative**
- 11 **and individual judgment be assured. The preservation and**
- 12 **expansion of that competition is basic to the economic well-being**
- 13 **of Indiana and that well-being cannot be realized unless the actual**
- 14 **and potential capacity of women, minority, and disabled veteran**
- 15 **business enterprises is encouraged and developed. Therefore, it is**
- 16 **the declared policy of the state to aid the interests of women,**
- 17 **minority, and disabled veteran business enterprises in order to**
- 18 **preserve reasonable and just prices and a free competitive**
- 19 **enterprise, to ensure that a fair proportion of the total purchases**
- 20 **and contracts or subcontracts for commodities, supplies,**
- 21 **technology, property, and services for regulated utilities are**
- 22 **awarded to women, minority, and disabled veteran business**
- 23 **enterprises, and to maintain and strengthen the overall economy**

of Indiana.

(b) The general assembly finds all of the following:

(1) The opportunity for full participation in our free enterprise system by women, minority, and disabled veteran business enterprises is essential if Indiana is to attain social and economic equality for those businesses and improve the functioning of Indiana's economy.

(2) Public agencies that have established short and long range women, minority, and disabled veteran business enterprise goals are awarding at least five percent (5%) of the agencies' contracts to these business enterprises.

(3) Women, minority, and disabled veteran business enterprises have traditionally received less than a proportionate share of regulated public utility procurement contracts.

(4) It is in the interest of the state to expeditiously improve the economically disadvantaged position of women, minority, and disabled veteran business enterprises.

(5) The position of these businesses can be improved by providing long range substantial goals for procurement by regulated public utilities of technology, equipment, supplies, services, materials, and construction work from women, minority, and disabled veteran businesses.

(6) That procurement also benefits the public utilities and consumers of Indiana by encouraging the expansion of the number of suppliers for procurements, thereby encouraging competition among the suppliers and promoting economic efficiency in the process.

Sec. 2. It is the purpose of this chapter to do all the following:

(1) Encourage greater economic opportunity for women, minority, and disabled veteran business enterprises.

(2) Promote competition among regulated public utility suppliers in order to enhance economic efficiency in the procurement of electrical, gas, and telephone corporation contracts and contracts of their commission regulated subsidiaries and affiliates.

(3) Clarify and expand the program for the procurement by regulated public utilities of technology, equipment, supplies, services, materials, and construction work from women, minority, and disabled veteran business enterprises.

Sec. 3. This chapter applies to electrical, gas, and telephone corporations with gross annual revenues of at least twenty-five million dollars (\$25,000,000) and the corporations' subsidiaries or

1 affiliates that are subject to commission regulation.

2 Sec. 4. As used in this chapter, "control" means exercising the
3 power to make policy decisions.

4 Sec. 5. As used in this chapter, "disabled veteran business
5 enterprise" means a business concern certified by the commission
6 as meeting all the following requirements:

7 (1) It is:

8 (A) a sole proprietorship that is at least fifty-one percent
9 (51%) owned by one (1) or more disabled veterans or, in
10 the case of a publicly owned business, at least fifty-one
11 percent (51%) of its stock is owned by one (1) or more
12 disabled veterans;

13 (B) a subsidiary that is wholly owned by a parent
14 corporation, but only if at least fifty-one percent (51%) of
15 the voting stock of the parent corporation is owned by one
16 (1) or more disabled veterans; or

17 (C) a joint venture in which at least fifty-one percent
18 (51%) of the joint venture's management and control and
19 earnings is held by one (1) or more disabled veterans.

20 (2) One (1) or more disabled veterans manage and control
21 the daily business operations. The disabled veterans who
22 exercise management and control are not required to be the
23 same disabled veterans as the owners of the business
24 concern.

25 (3) The business concern is a sole proprietorship, corporation,
26 or partnership with the business's home office located in the
27 United States, which is not a branch or subsidiary of a foreign
28 corporation, foreign firm, or other foreign based business.

29 Sec. 6. As used in this chapter, "minority" includes Black
30 Americans, Hispanic Americans, Native Americans, and Asian
31 Pacific Americans.

32 Sec. 7. As used in this chapter, "minority business enterprise"
33 means a business enterprise:

34 (1) that is at least fifty-one percent (51%) owned by a
35 minority group or groups or, in the case of a publicly owned
36 business, at least fifty-one percent (51%) of the stock is
37 owned by one (1) or more minority groups; and

38 (2) whose management and daily business operations are
39 controlled by one (1) or more individuals from those groups.

40 Sec. 8. As used in this chapter, "operate" means being actively
41 involved in the day-to-day management and not merely serving as
42 officers or directors.

43 Sec. 9. As used in this chapter, "women business enterprise"

1 means a business enterprise:

- 2 (1) that is at least fifty-one percent (51%) owned by one (1)
3 or more women or, in the case of a publicly owned business,
4 at least fifty-one percent (51%) of the stock is owned by one
5 (1) or more women; and
6 (2) whose management and daily business operations are
7 controlled by one (1) or more of those individuals.

8 Sec. 10. (a) Each electrical, gas, and telephone corporation and
9 its subsidiaries and affiliates shall submit annually to the
10 commission a detailed and verifiable plan for increasing women,
11 minority, and disabled veteran business enterprise procurement
12 in all categories.

13 (b) The annual plans required by this section must include:

- 14 (1) short and long term goals and timetables, but not quotas;
15 and
16 (2) methods for encouraging both prime contractors and
17 grantees to engage women, minority, and disabled veteran
18 business enterprises in subcontracts in all categories that
19 provide subcontracting opportunities.

20 (c) The commission shall establish guidelines for all electrical,
21 gas, and telephone corporations and their subsidiaries and
22 affiliates to be used in establishing programs under this chapter.

23 (d) Each electrical, gas, and telephone corporation shall furnish
24 an annual report to the commission regarding the implementation
25 of programs established under this chapter. The commission shall
26 annually designate the form for the report and the time that the
27 report must be submitted.

28 (e) The commission shall provide a report to the general
29 assembly not later than November 1 of each year on the progress
30 of activities undertaken by each electrical, gas, and telephone
31 corporation under this chapter in the implementation of women,
32 minority, and disabled veterans business enterprise development
33 programs. As part of the report, the commission shall recommend
34 a program for carrying out the policy declared in this chapter
35 together with recommendations for legislation that the
36 commission considers necessary or desirable to further that
37 policy.

38 Sec. 11. (a) The commission shall by rule or order adopt criteria
39 for verifying and determining the eligibility of women, minority,
40 and disabled veteran business enterprises for procurement
41 contracts.

42 (b) The commission shall develop an outreach program to
43 inform and recruit women, minority, and disabled veteran

1 business enterprises to apply for procurement contracts under this
2 chapter.

3 (c) Each electrical, gas, and telephone corporation and its
4 subsidiaries and affiliates shall implement an outreach program
5 developed by the commission under this section.

6 Sec. 12. (a) A person or corporation that, through its directors,
7 officers, or agents, falsely represents a business as a women,
8 minority, or disabled veteran business enterprise in the
9 procurement of or attempt to procure contracts from an electrical,
10 a gas, or a telephone corporation or a subsidiary or an affiliate
11 subject to this chapter commits a Class A misdemeanor.

12 (b) In the case of a corporation, the penalty shall be imposed on
13 each director, officer, or agent responsible for the false
14 statements.

15 Sec. 13. In order to facilitate the participation of women owned
16 businesses, minority owned businesses, and small businesses in
17 contract procurement, a corporation subject to this chapter may
18 consider the following measures to include those businesses in all
19 phases of contracting:

20 (1) Timely or progressive payments to those businesses.

21 (2) An amendment of the performance bond requirements
22 when past performance within a specified area of business
23 justifies that consideration.

24 (3) The provision of assistance to those businesses by
25 securing contract payments to those businesses with letters
26 of credit, negotiable securities, or other financing
27 arrangements or measures."

(Reference is to HB 1436 as printed January 30, 2003.)

Representative Crawford